

1 HONORABLE JOHN H. CHUN  
2 HEARING: APRIL 15, 2022  
3 WITHOUT ORAL ARGUMENT  
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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 TERI KEALOHA SAHM,  
10 Plaintiff,  
11 v.  
12 SELECT PORTFOLIO SERVICING, INC.,  
13 Defendant.

Case No. 2:22-cv-00165

DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S EMERGENCY MOTION FOR  
PERMANENT INJUNCTION

14 I. RELIEF REQUESTED

15 Defendant Select Portfolio Servicing, Inc. (“SPS”) respectfully requests that the Court  
16 deny Plaintiff’s Emergency Motion for Permanent Injunction (“Motion”). Plaintiff Teri Sahm  
17 (“Sahm”) seeks unwinding of the non-judicial foreclosure on the subject property, sale of the  
18 property to a third party, and her eviction from the property, as well as damages from each  
19 entity involved in these processes. However, Sahm previously litigated these issues in a state  
20 court action against the third-party buyer, and lost. Sahm also filed in this Court a Complaint  
21 similar to the present Complaint and Motion, and the Honorable Ricardo S. Martinez dismissed  
22 Sahm’s prior Complaint for failure to state a claim. Plaintiff is barred as a matter of law from  
23 re-litigating the same issues and claims in the present action.

24 In the present action, once again, Plaintiff has not alleged or established any viable  
25 irregularity in the foreclosure and eviction. Further, under RCW 61.24.127, Plaintiff cannot  
26

1 unwind the foreclosure and trustee's sale because she failed to move for an injunction to restrain  
 2 the sale. Therefore, Plaintiff cannot meet the standard for a permanent injunction, or satisfy the  
 3 four-part test. *See MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 520 (9th Cir. 1993)  
 4 ("As a general rule, a permanent injunction will be granted when liability has been established  
 5 and there is a threat of continuing violations.") (citation omitted).

6 In addition to the substantive failures of Plaintiff's Motion, Plaintiff lacks authority to  
 7 obtain a permanent injunction at this time. She cannot establish liability based on her Complaint  
 8 and there is no threat of continuing action.

## 9 II. STATEMENT OF FACTS

### 10 A. Foreclosure on the Property

11 On or about April 21, 2004, Plaintiff executed a promissory note in the principal amount  
 12 of \$432,000.00 ("Note"). *Sagara Dec.*, ¶3, Ex. A, at pp. 12-16. Plaintiff also executed a Deed  
 13 of Trust which encumbered the property at 35022 Southeast Fall City—Snoqualmie Road, Fall  
 14 City, Washington 98024 (the "Property") to secure payment of the Note. *Id.*, at pp. 18-32.

15 Plaintiff failed to make the mortgage payment due by October 1, 2017 and all payments  
 16 thereafter. Therefore, on or about April 23, 2019, SPS served a Notice of Default on Plaintiff  
 17 on behalf of the Investor of the mortgage loan, which advised that SPS would accelerate the  
 18 loan and initiate foreclosure if Plaintiff did not cure the default. Because Plaintiff failed to cure  
 19 the default, SPS initiated a non-judicial foreclosure on the Property. *See id.*, at pp. 8-10. On  
 20 January 7, 2022, the Property was sold to a third party, Jagroop Singh ("Singh"), at a trustee's  
 21 foreclosure sale. *See Motion*, at pp. 21-22.

### 22 B. Plaintiff Improperly Filed Bankruptcy Six Times to Try to Stop or Delay the 23 Foreclosure.

24 After SPS initiated the non-judicial foreclosure, Plaintiff filed for Chapter 13  
 25 bankruptcy six times to attempt to stay the foreclosure:

26 • On November 1, 2019, she initiated U.S. Bankruptcy Court, Western District of

1 Washington, at Seattle, Petition No.19-14050-TWD;

2 • On December 27, 2019, she initiated U.S. Bankruptcy Court, Western District of  
3 Washington, at Seattle, Petition No. 19-14677-TWD;

4 • On February 22, 2021, she initiated U.S. Bankruptcy Court, Western District of  
5 Washington, at Seattle, Petition No. 21-10366-TWD;

6 • On May 28, 2021, she initiated U.S. Bankruptcy Court, Western District of  
7 Washington, at Seattle, Petition No. 21-11069-CMA;

8 • On November 18, 2021, she initiated U.S. Bankruptcy Court, Western District of  
9 Washington, at Seattle, Petition No. 21-12093-TWD;

10 • On January 3, 2022, she initiated U.S. Bankruptcy Court, Western District of  
11 Washington, at Seattle, Petition No. 22-10006-TWD.

12 *Id.*, ¶4, Ex. B.

13 In two of the bankruptcies, SPS was forced to file motions to terminate the automatic  
14 stay and highlight Plaintiff's scheme to hinder, delay and/or defraud. *See, e.g., id.*, ¶3, Ex. A.  
15 Ultimately, the Court dismissed or closed each Bankruptcy Petition for inadequate filings, as  
16 Plaintiff had no intention to complete a Chapter 13 bankruptcy. *Id.*, ¶4, Ex. B.

17 Notably, while Plaintiff filed six Bankruptcy Petitions to attempt to stay the foreclosure,  
18 she never sought an injunction in state court to attempt to stop the trustee's sale.

19 **C. Judge Martinez Dismissed Plaintiff's Complaint for Failure to State a Claim.**

20 On December 31, 2019, Plaintiff initiated an action in the United States District Court,  
21 Western District of Washington, at Seattle, which was assigned case number 19-CV-02090  
22 RSM. *Id.*, ¶5, Ex. C. In her Complaint, Plaintiff named one hundred and thirty-three  
23 representatives (133) of the entities involved in the foreclosure and eviction. She also listed  
24 numerous alleged federal crimes, including robo-signing. *Id.* On an order to show cause, signed  
25 on February 14, 2020, Judge Martinez ordered Plaintiff to submit a response to the order to  
26 show cause. *Id.*, ¶6, Ex. D. Plaintiff submitted an unintelligible response in which she again

1 claimed fraud and robo-signing. *Id.*, ¶7, Ex. E. On March 9, 2020, Judge Martinez dismissed  
 2 Plaintiff's Complaint and closed the action. *Id.*, ¶8, Ex. F.

3 **D. Plaintiff Unsuccessfully Challenged Her Eviction in King County Superior Court  
 4 Case No. 22-2-02664-2 SEA.**

5 Because Plaintiff refused to vacate the Property, on February 23, 2022, Singh was forced  
 6 to file an action for unlawful detainer in King County Superior Court, which was assigned case  
 7 number 22-2-02664-2 SEA. *Id.*, ¶9, Ex. G. In her Answer, filed on February 23, 2022, Plaintiff  
 8 challenged the unlawful detainer action and claimed that by continuing it, Singh was  
 9 committing "fraud" and "Federal RICO crimes." *Id.*, ¶10, Ex. H, at p 2. Plaintiff further claimed  
 10 the trustee's sale was "unlawful and illegal." Plaintiff claimed that the entities involved in the  
 11 foreclosure and eviction were also committing federal crimes. *Id.*

12 On an order to show cause, the parties were required to appear at a March 14, 2022  
 13 hearing. *Id.*, ¶11, Ex. I. At the hearing before the Honorable Commissioner Brad Moore, the  
 14 parties were permitted to call witnesses and provide testimony. *See Motion*, at pp. 15-40. Sahm  
 15 provided testimony in which she added to her claimed crimes. *See Motion*, at pp. 9-37. Notably,  
 16 Sahm did not claim she did not execute the Note and Deed of Trust, nor did she dispute the  
 17 default. *See Motion*, at pp. 9-37. Sahm did not specify any irregularity in the foreclosure or  
 18 eviction. *Id.* Judge Moore highlighted that there was not an order to restrain the trustee's sale.  
 19 *See Motion*, at p. 30. After reviewing the parties' submissions and hearing testimony, Judge  
 20 Moore signed the writ of restitution. *See Motion*, at p. 39.

21 **III. STATEMENT OF ISSUES**

22 Whether the Court should deny Plaintiff's Motion when a) she previously litigated the  
 23 claims or issues, and lost; b) she again fails to allege or establish any viable irregularity in the  
 24 foreclosure and eviction; and c) she previously failed to file for an injunction to restrain the  
 25 trustee's sale.

#### **IV. EVIDENCE RELIED UPON**

- A. Declaration of Midori R. Sagara; and
- B. The pleadings and records filed herein.

## V. ARGUMENT

**A. Plaintiff is Barred as A Matter of Law from Re-litigating the Claims and Issues in Her Motion.**

## **1. Collateral Estoppel and Res Judicata**

Collateral estoppel, or issue preclusion, prevents re-litigation of an issue “when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.” *Monahan v. Emerald Performance Materials, LLC*, 705 F.Supp.2d 1206, 1213 (W.D. Wash. Feb. 25, 2010), *citing Amadeo v. Principal Mut. Life Ins. Co.*, 290 F.3d 1152, 1159 (9<sup>th</sup> Cir. 2002). Res judicata, or claim preclusion, bars re-litigation of a claim if a court has reached a final judgment on that claim in a previous action involving the same parties or their privies. *Id.* at 1213 (citation omitted). Under both doctrines, federal courts generally require the following:

- 1) the claim or issue decided in the prior adjudication is identical to the claim or issue in the present action;
- 2) the prior adjudication resulted in a final judgment on the merits; and
- 3) the party against whom collateral estoppel or res judicata is asserted was a party or in privity with a party to the prior adjudication.

*Id.*, citing *Sidhu v. Flecto Co., Inc.* 279 F.3d 896, 900 (9th Cir. 2002) (describing res judicata requirements); *Maciel v. C.I.R.*, 489 F.3d 1018, 1023 (9th Cir. 2007) (describing collateral estoppel requirements).

Collateral estoppel has two additional requirements: 1) a party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding; and 2) the determination of the issue must have been essential to the prior judgment.

1       *Id.* (citations omitted).

2                  The doctrines of collateral estoppel and res judicata directly apply to the present  
 3 scenario. Because Plaintiff previously unsuccessfully litigated the allegations and claims in her  
 4 Motion in Singh's unlawful detainer action, she cannot re-litigate these allegations and claims  
 5 in the present action. Judge Martinez also previously dismissed these allegations and claims for  
 6 failure to state a claim. Therefore, Plaintiff cannot re-plead these allegations and claims in this  
 7 action and obtain a different outcome.

8                  **2. Plaintiff Unsuccessfully Litigated the Issues of the Foreclosure, Trustee's  
 9 Sale and Eviction in King County Superior Court Case No. 22-2-02664-2  
 10 SEA.**

11                  In Singh's unlawful detainer action, commenced on February 23, 2022, Plaintiff as  
 12 defendant in the action challenged the foreclosure, trustee's sale and eviction. *Sagara Dec.*,  
 13 ¶10, Ex. H; *see also Motion*. In her February 23, 2022 Answer, she unintelligibly challenged  
 14 jurisdiction and alleged "fraud," "Federal RICO crimes," and an "unlawful and illegal" trustee's  
 15 sale. Plaintiff related the allegations to the entities involved in the foreclosure and eviction,  
 16 including Singh. *Id.*, ¶10, Ex. H, at p. 2. Just as in her February 23, 2022 Answer, in her present  
 17 Motion, Plaintiff unintelligibly challenged jurisdiction and alleged myriad claims of fraud and  
 18 federal crimes in her attempt to unwind the trustee's sale and foreclosure.

19                  Most importantly, in the unlawful detainer action, Plaintiff was provided the opportunity  
 20 to present testimony and evidence. *See Motion*, at pp. 15-40. As the transcript of the March 14,  
 21 2022 hearing shows, Plaintiff filed or submitted 2,438 pages for Commissioner Moore's review.  
 22 *See Motion*, at p. 19. She also provided testimony, in which she read verbatim the first paragraph  
 23 in her present Motion, beginning "I have evidence of unlawful conversion, kidnapping, human  
 24 trafficking..." *See Motion*, at pp. 25-26. Plaintiff probably would have continued to read  
 25 excerpts from the Motion had Commissioner Moore not interrupted. At the hearing, Plaintiff  
 26 also referred to her dismissed federal court action, commenced on December 31, 2019, in which

she named one hundred and thirty-three (133) representatives of the entities involved in the foreclosure and eviction, and listed numerous alleged federal crimes. *See Motion*, at pp. 32-33.

After considering all the documents and testimony, Commissioner Moore signed the writ of restitution. *See Motion*, at p. 39. Commissioner Moore highlighted that Plaintiff had not moved for an injunction to restrain the trustee’s sale, nor was there a bankruptcy stay at the time of the sale. *Id.* Plaintiff had not specified any viable irregularity in the foreclosure or eviction upon which Commissioner Moore could find in her favor. Commissioner Moore’s rejection of Plaintiff’s allegations and claims, the same as she makes in her present Motion, was essential to his decision to permit the eviction to proceed.

Under the doctrines of claim preclusion and res judicata, Plaintiff cannot re-litigate the issues and claims decided in the unlawful detainer action in this Court. She also cannot attempt to circumvent any Washington Court of Appeals' ruling on an appeal of the writ of restitution by filing the same allegations and claims in this Court. Plaintiff's Motion must be denied.

**3. Judge Martinez Dismissed Plaintiff's Allegations and Claims Re-Plead in this Action.**

Similar to the analysis above, Plaintiff previously filed the allegations and claims in her Motion and Complaint in the action in the United States District Court, Western District of Washington, at Seattle, No. 19-CV-02090 RSM. *Sagara Dec.*, ¶5, Ex. C. Plaintiff's December 31, 2019 Complaint named one hundred and thirty-three representatives (133) of the entities involved in the foreclosure and eviction, and listed numerous alleged federal crimes of fraud or sounding in fraud, including RICO violations and robo-signing. *Id.* In Plaintiff's present Motion, she listed numerous individuals and entities involved in the foreclosure and eviction. Plaintiff further asserted myriad federal claims of fraud or sounding in fraud, and she specifically alleged robo-signing in her present Complaint. In both federal actions, Plaintiff's filings are unintelligible and fail to specify any viable basis for unwinding the foreclosure and trustee's sale.

In the prior federal court action, in an order to show cause, Judge Martinez provided Plaintiff with an opportunity to explain or re-plead her allegations/claims to state a claim. *Id.*, ¶6, Ex. D. Plaintiff failed to do so in her responsive briefing and on February 14, 2020, Judge Martinez dismissed Plaintiff's prior Complaint and closed the action. Plaintiff cannot re-file her unintelligible allegations or claims in the present action. Judge Martinez has already ruled dismissal was appropriate because Plaintiff failed to state any claim. *Id.*, ¶8, Ex. F.

#### **B. Plaintiff Cannot Meet the Standard for a Permanent Injunction.**

##### **1. Permanent Injunction**

To obtain a permanent injunction, a party must satisfy a four-part test: 1) irreparable harm; 2) lack of adequate remedies at law; 3) the balance of hardships weighs in its favor; and 4) the injunction is in the public's interest. *See eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 393-94 (2006).

Further, “[a]s a general rule, a permanent injunction will be granted when liability has been established and there is a threat of continuing violations.” *MAI Sys. Corp.*, 991 F.2d at 520, *citing Nat'l Football League v. McBee & Bruno's, Inc.*, 792 F.2d 726, 732 (8<sup>th</sup> Cir. 1986).

##### **2. Plaintiff has not Alleged or Established Any Irregularity in the Foreclosure or Eviction.**

In the present Motion, Plaintiff has not identified any facts that would support a basis to unwind the foreclosure and trustee's sale, such as an irregularity in either process, or entitle her to monetary damages. Notably, Plaintiff does not dispute that she borrowed money in connection with the Property and then defaulted on the loan. Because Plaintiff has not even met the pleading threshold, she could not possibly establish liability on the part of any individual or entity involved in the foreclosure or eviction. Therefore, Plaintiff cannot obtain a permanent injunction or recover any damages. *See MAI Sys. Corp.*, 991 F.2d at 520.

Plaintiff also could not satisfy the four-part test for a permanent injunction in this action. First, there is no irreparable harm in the present scenario. If Plaintiff were able to establish an

1 actual irregularity in the foreclosure or trustee's sale, she could obtain an order to unwind the  
 2 sale and foreclosure. Second, this would be an adequate remedy at law, as well as monetary  
 3 damages. Third, plaintiff does not dispute that she did not make the mortgage payment due by  
 4 October 1, 2017 and all payments thereafter. The balance of hardships does not favor that  
 5 Plaintiff could not make a mortgage payment for about four and a half years and continue living  
 6 at the Property. Fourth, and finally, an injunction is not in the public's interest; rather, it is only  
 7 in Plaintiff's interest.

8 Even if the Court looked beyond Plaintiff's Motion to the Complaint, the only fact  
 9 Plaintiff alleged is that two copies of the Note were "robo-signed." See Dkt No. 1. However,  
 10 Washington Federal Courts have routinely rejected robo-signing as a cognizable legal theory.  
 11 See, e.g., *Bain v. Metro. Mortg. Group, Inc.*, 2010 WL 891585, at \*6 (W.D. Wash. March 11,  
 12 2010) ("There is simply nothing deceptive about using an agent to execute a document, and this  
 13 practice is commonplace in deed of trust actions."). Further, Plaintiff has not set forth any facts  
 14 that the individual who signed the Note on behalf of the Investor or owner lacked authority to  
 15 do so. If Plaintiff also intended to challenge any Assignment, as the borrower and third party to  
 16 the transaction, she would lack standing to do so. See *Ukpoma v. U.S. Bank Nat. Ass'n*, 12-CV-  
 17 0184-TOR, 2013 WL 1934172 (E.D. Wash. May 9, 2013) (dismissing mortgagor's allegations  
 18 of "robo-signing" for lack of standing to challenge the transaction); *Brodie v. Nw. Tr. Servs., Inc.*,  
 19 12-CV-0469-TOR, 2012 WL 6192723, at \*2 (E.D. Wash. Dec. 12, 2012) (collecting  
 20 cases dismissing borrower's claims of "robo-signing" for lack of standing to challenge the  
 21 transaction).

22 Moreover, even if the Court found that Plaintiff established an irregularity in the non-  
 23 judicial foreclosure and sale, the Court could not grant a permanent injunction to restrain  
 24 foreclosure. As stated, Plaintiff does not dispute the loan and default. The current Investor or  
 25 owner of the Note is still entitled to foreclose and could initiate a judicial foreclosure action.  
 26 *Thepvongsa v. Regional Trustee Services Corp.*, 972 F.Supp.2d 1221, 1232 (W.D. Wash. Sept.

1 25, 2013) (denying a permanent injunction where plaintiff did not identify any legal or equitable  
 2 justification for erasing the debt, and defendants were still entitled to judicially foreclose);  
 3 *McDonald v. OneWest Bank, FSB*, 929 F.Supp.2d 1079, 1088 (W.D. Wash. Mar. 7, 2013).

4 **C. Pursuant to RCW 61.24.127, Plaintiff Cannot Unwind the Foreclosure or Eviction.**

5 RCW 61.24.127 states in pertinent part:

- 6       (1) The failure of the borrower or grantor to bring a civil action to  
     7       enjoin a foreclosure sale under this chapter may not be deemed a  
     8       waiver of a claim for damages asserting:  
     9       (a) Common law fraud or misrepresentation;  
     10      (b) A violation of Title 19 RCW;  
     11      (c) Failure of the trustee to materially comply with the provisions of  
     12       this chapter; or  
     13      (d) A violation of RCW 61.24.026.
- 14       (2) The nonwaived claims listed under subsection (1) of this section  
     15       are subject to the following limitations:  
     16       (a) The claim must be asserted or brought within two years from the  
     17       date of the foreclosure sale or within the applicable statute of  
     18       limitations for such claim, whichever expires earlier;  
     19       **(b) The claim may not seek any remedy at law or in equity other  
     20       than monetary damages;**  
     21       **(c) The claim may not affect in any way the validity or finality of  
     22       the foreclosure sale or a subsequent transfer of the property;**  
     23       ...  
     24

17 RCW 61.24.127 (emphasis added).

18 As Commissioner Moore highlighted, Plaintiff did not seek an injunction to restrain the  
 19 trustee's sale. *See Motion*, at p. 30. Instead, Plaintiff attempted to stop or delay the foreclosure  
 20 and sale by improperly filing for Chapter 13 bankruptcy six times from November 1, 2019 to  
 21 January 3, 2022. *Sagara Dec.*, ¶4, Ex. B. Since Plaintiff did not seek to restrain the trustee's  
 22 sale, she is limited to monetary damages if she could establish a viable claim. *See* RCW  
 23 61.24.127(2)(b). Under RCW 61.24.127(2)(c), she is precluded from unwinding the sale to  
 24 Singh and interfering with his property rights.

1           **D. Plaintiff Lacks Procedural Authority for a Permanent Injunction.**

2           In general, a permanent injunction will be granted when liability has been established  
 3 and there is a threat of continuing violations. *MAI Sys. Corp.*, 991 F.2d at 520. At this procedural  
 4 posture, Plaintiff has not, and cannot, establish any liability as SPS. There is no authority for a  
 5 permanent injunction now. Further, as a practical matter, because the foreclosure, trustee's sale  
 6 and eviction are completed, there is no threat of continuing action to Plaintiff. A permanent  
 7 injunction is unnecessary, unwarranted and not permissible.

8           **VI. CONCLUSION**

9           Plaintiff's Motion must be denied. Her unintelligible allegations and claims therein have  
 10 been litigated in Singh's prior unlawful eviction action, where Plaintiff had the opportunity to  
 11 present evidence and testify. This Court also previously dismissed Plaintiff's unintelligible  
 12 allegations and claims for failure to state a claim after providing Plaintiff a second opportunity  
 13 to plead. Plaintiff should not be permitted to re-litigate these allegations and claims in the  
 14 present action.

15           Nothing has changed in this action. Plaintiff has failed to specify any facts to support  
 16 any irregularity in the foreclosure and trustee's sale. She also does not dispute the loan and  
 17 default. There is simply no basis for a permanent injunction, procedurally or substantively.  
 18 Accordingly, Plaintiff's Motion should be denied.

19           Dated: April 11, 2022

BUCHALTER

21           By: */s/ Midori R. Sagara*

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25           *Attorneys for Defendant*

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on April 11, 2022, I caused to be served a copy of the foregoing  
3 on the following person in the manner indicated below at the following address:

4                   **Plaintiff Pro Se:**

5                   Teri Kealoha Sahm  
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10                   by CM/ECF  
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